

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q71242

Isabelle LALLEMANT, et al.

Appln. No.: 10/603,938

Group Art Unit: 3754

Confirmation No.: 3415

Examiner: Joseph A. KAUFMAN

Filed: June 26, 2003

For: A FLUID DISPENSER

PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Office Action dated May 24, 2007, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Appellant turns now to the rejections at issue:

The Office Action includes two sets of rejections for each of the claims. The first set of rejections asserts that Crampton (WO 99/02424) includes a recovery dish or a concave recovery dish. The second set of rejections states that even if Crampton does not include a recovery dish, that Rehberger (U.S. Patent No. 2,069,048) corrects this deficiency.

The May 24, 2007 Office Action cites the same references as in the previous Office Action dated October 13, 2006. Accordingly, Appellant's Amendment filed January 4, 2007 remains relevant to these rejections. Appellant also adds the additional comments below.

Claim Rejections - Crampton

Claims 1, 8, 14, 17, 18, 23, 24 and 26 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Crampton et al. (WO 99/02424).

Claims 2-6, 11, 19-22 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Crampton in view of Hoyt (U.S. Patent No. 4,732,299).

Claims 9, 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Crampton in view of Provenza (WO 01/79073). Appellant respectfully traverses.

Claim 1 recites a concave recovery dish with an orifice formed at its bottom so that the fluid dispensed by the orifice remains in the dish and can be recovered by the user. Claim 1 further recites that the recovery dish extends outwardly from the orifice at a center of the bottom of the dish to a peripheral margin of the dish to form the concave shape of the dish. For example, a non-limiting embodiment of the present application teaches a concave recovery dish 345 with a dispensing orifice 344 formed at the bottom. The dish extends outwardly from the orifice at a center of the bottom to a peripheral margin to form the concave shape of the dish.

The Examiner asserts that the Crampton spout 8 constitutes the claimed concave recovery dish. However, the Crampton spout 8 is merely a hollow cylindrical tube, and is not a concave recovery dish and one of ordinary skill in the art would not consider the spout 8 a concave recovery dish. MPEP §2111 provides that the claims must be given their broadest *reasonable* interpretation *in light of the specification as it would be interpreted by one of ordinary skill in the art*. One of ordinary skill in the art interpreting the claims in light of the specification would not consider the Crampton spout 8 to be a concave recovery dish as claimed. A spout is simply not a concave dish. Although the Examiner insists that the spout 8 is concave and a dish, it is unclear

how the Examiner reaches this conclusion as a reasonable interpretation consistent with the specification would not lead to such a result. It appears as though the Examiner is giving the term “dish” little or no weight and giving the terms “dish” and “concave” meanings which are broader than reasonable and in a manner which is inconsistent with their ordinary meaning as used in the specification. Yet, claim term must be considered and given its broadest reasonable interpretation as would be understood by one of ordinary skill in the art.

Furthermore, claim 1 the Crampton spout 8 is merely a hollow tube. Although the Examiner asserts that it extends outwardly from a center of a bottom to a peripheral margin to form a concave shape, it is unclear how the Examiner believes that this is the case. As shown in the figures of the present application, in a non-limiting embodiment, the concave recovery dish 345 extends outwardly from a bottom center to form a concave shape. In contrast, the spout has no bottom and merely extends upwardly. Accordingly, Crampton does not have a concave recovery dish as set forth in claim 1. Neither Hoyt nor Provenza are cited as teaching a concave recovery dish nor do they correct the deficiencies of Crampton with respect to such a dish.

In view of the above, Appellant submits that claim 1 and its dependents are allowable over Crampton or the combination of Crampton and Hoyt or Crampton and Provenza. Claims 14 and 19 are also allowable at least for reasons similar to claim 1 and the claims depending therefrom are allowable at least by virtue of their respective dependencies.

Furthermore, at least claim 26 is allowable for additional reasons. Claim 26 recites that the top rim of the recovery dish transitions into the actuating wall. For example, see the non-limiting embodiment as shown in Figs. 4 and 5 with concave recover dish 345. Claim 26 is

further allowable at least because the top rim of the Crampton spout 8 does not transition into the alleged actuating wall.

Claim Rejections - Crampton and Rehberger

Claims 1, 8, 14, 17, 18, 23, 24 and 26 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Crampton in view of Rehberger (U.S. Patent No. 2,069,048).

Claims 2-6, 11, 19-22 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Crampton and Rehberger in view of Hoyt (U.S. Patent No. 4,732,299).

Claims 9, 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Crampton and Rehberger in view of Provenza (WO 01/79073). Appellant respectfully traverses.

As discussed above, Crampton lacks a concave recovery dish as claimed. The Examiner attempts to correct this deficiency by modifying Crampton with the Rehberger bowl 15. However, one of ordinary skill in the art would not have been motivated to modify Crampton with Rehberger as suggested by the Examiner.

Crampton is directed to an anaerobic sealant or adhesive and Rehberger is directed to a large screwable lather bowl. There is no motivation for including the large lather bowl of Rehberger onto the Crampton adhesive container. If the Rehberger bowl were used with the Crampton adhesive container, adhesive dispensed from Crampton would stick to and harden in the bowl, rendering the bowl ruined after a single use. There is simply no motivation for such bowl that would be destroyed in a single use, especially since Rehberger envisions using the bowl multiple times (screwing it and unscrewing it to close and open the container).

Furthermore, it would not be reasonable to attach a large bowl onto the Crampton flexible pouch because it would render the pouch unstable. Because the pouch lacks sufficient rigidity to

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hold the bowl and the bowl would extend perpendicularly to the plane of the pouch, the structure would fall if the pouch was intended to hold the bowl (consider attempting to attach the Rehberger bowl 15 to the Crampton device of Fig. 4). Conversely, the bowl could not support the pouch for similar reasons.

Additionally, Crampton seeks to tightly house the pouch 3 in an outer container 9. The Rehberger bowl 15 would not fit in this container 9 (*see* Crampton Fig. 4) and would defeat the purpose of the tight and contained packaging sought by Crampton. For all of these reasons, one of ordinary skill in the art would not have been motivated to modify Crampton with Rehberger.

Finally, the claimed recovery dish is made in one-piece integral construction with the dispensing piece. Even if the Rehberger bowl were attached to the Crampton device, there would be at least a two-piece construction with any dispensing piece.

Neither of the other cited references (Hoyt and Provenza) correct the deficiencies of the Rehberger and Crampton combination.

In view of the above, Appellant submits that claims 1-6, 8, 9 and 11-14 and 17-26 are allowable over the combined teachings and suggestions of the references cited by the Examiner.

Respectfully submitted,



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